

# Thimesch Law Offices

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JEAN RIKER

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JEAN RIKER,

CASE NO. Civil Rights

Plaintiff,

5

CARL'S JR. RESTAURANT 7041;  
BY-THE-BAY INVESTMENTS, INC.;  
YU CHEN; YEE C CHEN;  
ALEXANDER B. CHEN; SELINA W.  
CHEN CHAO; JIMMY C. K. CHEN;  
MAGGIE W T CHEN; DOE TRUSTS  
1-5; MALL PARKING LOT OWNERS  
DOE 6-10; AND DOES 11-50,  
Inclusive,

## Defendants.

**COMPLAINT FOR INJUNCTIVE RELIEF  
AND DAMAGES: DENIAL OF CIVIL  
RIGHTS OF A DISABLED PERSON IN  
VIOLATION OF THE AMERICANS WITH  
DISABILITIES ACT, AND IN  
VIOLATION OF CALIFORNIA'S  
DISABLED RIGHTS STATUTES**

**DEMAND FOR JURY TRIAL**

Proper Intradistrict  
Assignment Civil L.R. § 3-2:  
San Jose]

Plaintiff JEAN RIKER, on behalf of herself and other similarly situated disabled persons, hereby complains of defendants CARL'S JR. RESTAURANT 7041; BY-THE-BAY INVESTMENTS, INC., a California Corporation; YU CHEN and YEE C CHEN, as trustees of the Chen Family Trust; ALEXANDER B. CHEN and SELINA W. CHEN CHAO, as trustees of the Chao Family Trust; JIMMY C. K. CHEN; MAGGIE W T CHEN; DOE TRUSTS 1-5; MALL PARKING LOT OWNERS DOE 6-10; AND DOES 11-50, Inclusive (hereafter "defendants"), and demands a trial by jury, and alleges as follows:

1           **INTRODUCTION**

2           1. Plaintiff is a person with a disability whose  
3 condition requires the use of a wheelchair for mobility. By-  
4 the-Bay Investments, Inc. owns franchised and privately owned  
5 restaurants throughout the Bay Area and state. Among its  
6 holdings, By-the-Bay Investments, Inc. owns, operates and leases  
7 the subject Carl's Jr. Restaurant, company restaurant number  
8 7041, located at or near 270 Saratoga Avenue, Santa Clara, Santa  
9 Clara County, California.

10           2. The restaurant is inaccessible to disabled  
11 persons. This is a suit to require the owner-operator-leasing  
12 defendants to make the restaurant accessible and usable by  
13 disabled person. Defendants maintain barriers at their paths of  
14 travel, dining tables, service and condiment counters, and, most  
15 humiliatingly, the public restrooms, that are inaccessible to  
16 physically disabled persons who use wheelchairs, including  
17 plaintiff Jean Riker.

18           3. Construction alterations carried out at this  
19 facility triggered access requirements under California law, as  
20 well as under the requirements of the Americans With  
21 Disabilities Act of 1990. As described hereinbelow, plaintiff  
22 seeks injunctive relief to require that the subject Carl's Jr.  
23 Restaurant which she visited and was unable to enter and use on  
24 a full and equal basis, be made accessible to disabled persons  
25 to meet the requirements of both California law and the  
26 Americans With Disabilities Act of 1990. Plaintiff also seeks  
27 damages for violation of her Civil Rights, from the day that she  
28 visited this Carl's Jr. Restaurant until such date as defendants

1 bring its public facilities into full compliance with the  
 2 requirements of California and federal law.

3

4 **JURISDICTION AND VENUE**

5       4. This Court has jurisdiction of this action  
 6 pursuant to 28 U.S.C. 1331 for violations of the Americans with  
 7 Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* Pursuant to  
 8 pendant jurisdiction, attendant and related causes of action,  
 9 arising from the same facts, are also brought under California  
 10 law, including but not limited to violations of California  
 11 Health & Safety Code Sections 19955 *et seq.*, including Section  
 12 19959; Title 24 California Code of Regulations; and California  
 13 Civil Code Sections 54 and 54.1 *et seq.*

14       5. Venue is proper in this court pursuant to  
 15 28 U.S.C. 1391(b) and is founded on the fact that the real  
 16 property which is the subject of this action is located in this  
 17 district and that plaintiff's causes of action arose in this  
 18 district.

19       6. **Intradistrict Jurisdiction.** Under Local Rule  
 20 3-2(d), this case should be assigned to the San Jose  
 21 intradistrict as the real property that is the subject of this  
 22 action is located in the San Jose intradistrict and plaintiff's  
 23 causes of action arose in the San Jose intradistrict (a property  
 24 located in Santa Clara County).

25

26 **PARTIES**

27       7. Plaintiff Jean Riker is a qualified "physically  
 28 handicapped" or "physically disabled" person, and requires the

1 use of a wheelchair for mobility. Plaintiff is informed and  
2 believes that each of the defendants herein, including DOE  
3 TRUSTS 1-5, MALL PARKING LOT OWNERS DOE 6-10, AND DOES 11-50,  
4 Inclusive, is the owner, constructive owner, beneficial owner,  
5 trust, trustee, agent, ostensible agent, alter ego, master,  
6 servant, employer, employee, representative, franchiser,  
7 franchisee, joint venturer, partner, associate, parent company,  
8 subsidiary, department, representative, or such similar  
9 capacity, of each of the other defendants, and was at all times  
10 acting and performing, or failing to act or perform, within the  
11 course and scope of his, her or its authority as owner,  
12 constructive owner, beneficial owner, agent, trust, trustee,  
13 ostensible agent, alter ego, master, servant, employer,  
14 employee, representative, franchiser, franchisee, joint  
15 venturer, partner, associate, parent company, subsidiary,  
16 department, representative, or such similar capacity, and with  
17 the authorization, consent, permission or ratification of each  
18 of the other defendants, and is responsible in some manner for  
19 the acts and omissions of the other defendants in proximately  
20 causing the violations and damages complained of herein, and  
21 have approved or ratified each of the acts or omissions of each  
22 other defendant, as herein described. Plaintiff and her agents  
23 are genuinely ignorant as to whether the franchisers, including  
24 Carl Karcher Enterprises, Inc., participate or have participated  
25 in the design and construction of this restaurant, or its  
26 operation, and therefore franchiser parties have not been named.  
27 Plaintiff will seek leave to amend when the true names,  
28 capacities, connections, and responsibilities of defendants

1 CARL'S JR. RESTAURANT 7041; BY-THE-BAY INVESTMENTS, INC.; YU  
 2 CHEN; YEE C CHEN; ALEXANDER B. CHEN; SELINA W. CHEN CHAO; JIMMY  
 3 C. K. CHEN; MAGGIE W T CHEN; DOE TRUSTS 1-5; MALL PARKING LOT  
 4 OWNERS DOE 6-10; AND DOES 11-50, Inclusive, are ascertained.

5       8. Plaintiff alleges on information and belief that  
 6 at all relevant times, defendants CARL'S JR. RESTAURANT 7041;  
 7 BY-THE-BAY INVESTMENTS, INC.; YU CHEN; YEE C CHEN; ALEXANDER B.  
 8 CHEN; SELINA W. CHEN CHAO; JIMMY C. K. CHEN; MAGGIE W T CHEN;  
 9 DOE TRUSTS 1-5; MALL PARKING LOT OWNERS DOE 6-10; AND DOES 11-  
 10 50, Inclusive, were and are the owners, operators, lessors  
 11 and/or lessees of the public accommodation located at or near  
 12 Assessor's Parcel Number 294-01-007, also know as Carl's Jr.  
 13 Restaurant, located at or near 270 Saratoga Avenue, Santa Clara,  
 14 California.

15       9. On information and belief, defendants have a  
 16 lease arrangement with the adjacent shopping mall permitting  
 17 Carl's Jr. customers to use the shopping mall's immediately-  
 18 adjacent parking facilities while patronizing the restaurant.  
 19 Plaintiff is genuinely ignorant of the true identities of the  
 20 mall parking lot owners/operators/lessors, and therefore names  
 21 such parties as MALL PARKING LOT OWNERS DOE 6-10.

22       10. The facilities of this business, including its  
 23 entrance, its interior and exterior paths of travel, its service  
 24 counter facilities, its dining facilities, and its public  
 25 restrooms, and other public facilities and amenities are each a  
 26 "public accommodation or facility" subject to the requirements  
 27 of California Health & Safety Code Sections 19955 et seq. and of  
 28 the California Civil Code Sections 54, 54.1, and 54.3. At all

1 times relevant to this complaint, defendants have held these  
 2 facilities open to public use. Such facilities also constitute  
 3 "public accommodations" or "commercial facilities" subject to  
 4 the requirements of Sections 302 and 303 of the Americans with  
 5 Disabilities Act of 1990.

6

7 **FACTUAL STATEMENT**

8           11. Defendants are required by law to provide  
 9 accessible facilities on each occasion that "alterations,  
 10 structural repairs or additions" were performed to such  
 11 facilities pursuant to legal standards then in effect, per  
 12 Section 19959 of the Health & Safety Code, and under Section 303  
 13 of the Americans With Disabilities Act (which governs "new  
 14 construction" and "alterations").

15           12. On information and belief, each such facility  
 16 has, since July 1, 1970, been newly constructed, and/or  
 17 undergone "alterations, structural repairs, and additions," each  
 18 of which has subjected the Carl's Jr. Restaurant and its public  
 19 facilities to disabled access requirements of Section 19959  
 20 Health & Safety Code, Title 24 of the California Code of  
 21 Regulations, and/or, for such work occurring since January 26,  
 22 1992, to the requirements of Section 303 of the Americans With  
 23 Disabilities Act.

24           13. On or about April 24, 2004, plaintiff visited the  
 25 subject Carl's Jr. for the purpose of purchasing a meal and  
 26 using the restroom. When plaintiff attempted to use the  
 27 restroom, she discovered that the women's public restroom door  
 28 opened outward into a small vestibule shared with the entry to

1 the men's restroom. There was virtually no room to operate her  
2 wheelchair to back away from the door – as was necessary for the  
3 operation of the women's restroom door. To enter the women's  
4 restroom, she was forced to open the men's restroom door, with  
5 the help of a stranger, back her chair into that room to angle  
6 her position out of the path of the women's restroom door and to  
7 provide a clear path for entry into the women's restroom. Once  
8 inside, she discovered that the toilet stall was so small and  
9 inaccessible that she had to have someone – again, the total  
10 stranger – help her transfer onto the toilet, and later had to  
11 ask this person she barely knew help her get off the toilet. In  
12 the process of transferring onto the toilet, the narrow size of  
13 the facilities forced plaintiff to fall back hard onto the seat,  
14 to her injury. Later, in the process of getting up, plaintiff  
15 fell forward, her shorts still around her ankles, and she landed  
16 on the filthy floor, to her injury. Her shorts also fell onto  
17 the filthy floor, exposing her in plain view to the stranger.  
18 She had to be picked up by the stranger and helped back to her  
19 chair.

20 14. On information and belief, other barriers to  
21 disabled access at the subject Carl's Jr. Restaurant include  
22 inaccessible entry ways to the both the women's and the  
23 alternative men's restroom, lack of clear floor space serving  
24 the fixtures, lack of turning circles, lack of a strike edge  
25 clearances at the doors, inaccessible door landings,  
26 inaccessibly configured grab bars, and inaccessibly placed  
27 toilets and other amenities. On information and belief, the  
28 restaurant also lacks an accessible path of travel from the

1       public right of way, improperly signed and partially improperly  
 2       configured parking, inaccessible landing at the public  
 3       telephone, inaccessible drink, condiment and service counters,  
 4       an inaccessible entrance, inaccessible dining facilities,  
 5       inaccessible paths of travel throughout the restaurant, and  
 6       other inaccessible facilities.

7               15. Plaintiff complained directly to the manager  
 8       about Carl Jr.'s inaccessible facilities, and followed up with a  
 9       complaint in writing, but it was obvious from the manager's  
 10      reaction that he was not interested. He appeared to dismiss  
 11      plaintiff as a mere trouble maker.

12               16. As a result of defendants' denial of legally  
 13      required access to disabled persons and the lack of access on  
 14      such occasion when plaintiff attempted to use the Carl's Jr.  
 15      Restaurant, plaintiff Jean Riker suffered a loss of her Civil  
 16      Rights and her rights as a disabled person to full and equal  
 17      access to public facilities, suffered severe physical strain and  
 18      exhaustion from attempting to negotiate barriers, suffered  
 19      severe physical pain and discomfort, was humiliated and suffered  
 20      mental and emotional distress and statutory damages, all to her  
 21      damages as prayed hereinafter in an amount with the jurisdiction  
 22      of this court.

23               17. Defendants' denial of access has caused plaintiff  
 24      to suffer physical, psychological, and emotional injuries,  
 25      including but not limited to humiliation, frustration and anger,  
 26      and deprived her independence, self-sufficiency and autonomy.  
 27      Plaintiff would like to return and use the subject Carl's Jr.  
 28      Restaurant on a spontaneous, but full and equal basis. However,

1       she is prevented from doing so by defendants' failure and refusal  
 2       to provide disabled persons like plaintiff with "full and equal  
 3       access" to the Carl's Jr. Restaurant facilities. Defendants'  
 4       actions and omissions have caused her physical, mental and  
 5       emotional distress, and violation of her Civil Rights, all to her  
 6       damages.

7               18. On information and belief, a number of facilities  
 8       in the building have been remodeled during the statutory period  
 9       since July 1, 1970, triggering accessible "path of travel"  
 10       requirements to each area of alteration, which includes, but is  
 11       not limited to, accessible public sanitary facilities and a path  
 12       of travel, complying with ADA and Title 24 standards. On  
 13       information and belief, defendants have not complied with these  
 14       legal obligations.

15               19. The "removal" of each of these barriers to use by  
 16       disabled persons was "readily achievable" under the standards of  
 17       Section 301(9) of the Americans With Disabilities Act of 1990  
 18       [42 U.S.C. 12181] at all times herein relevant. Section 303 of  
 19       the ADA [42 U.S.C. 12183] and California law also required the  
 20       removal of all such barriers upon performance of "alterations."

21               20. On information and belief, defendants continue to  
 22       the present date to deny "full and equal access" to plaintiff  
 23       and to all other disabled persons, in violation of California  
 24       law, including Health & Safety Code Sections 19955 *et seq.*,  
 25       Civil Code Sections 54 and 54.1, and Title 24 of the California  
 26       Code of Regulations (a.k.a. California Building Code). Further,  
 27       such denial of access to disabled persons also violates the  
 28       requirements of Title III of the federal Americans With

1      Disabilities Act of 1990, Sections 301 et seq. [42 U.S.C.,  
2      §§ 12181 et seq.] (Hereinafter also called the "ADA").

**FIRST CAUSE OF ACTION:**  
**BREACH OF STATUTORY PROTECTIONS FOR PHYSICALLY DISABLED PERSONS**

6                   21. Plaintiff repleads and incorporates by reference,  
7 as if fully set forth again herein, the allegations contained in  
8 Paragraphs 1 through 20, above.

9                   22. Plaintiff Jean Riker was and is at all times  
10 relative to this complaint a "physically disabled" person or  
11 "physically handicapped" person under standards as defined by  
12 all California statutes using these terms. Plaintiff is also an  
13 "individual with a disability" as defined by Section 54(b) Civil  
14 Code, as well as Section 3(2) of the ADA. Each violation of the  
15 ADA, as plead hereinafter, is incorporated by reference as a  
16 separate violation of Sections 54(c) and 54.1(d) California  
17 Civil Code.

18                   23. Health & Safety Code Section 19955 provides in  
19 pertinent part:

20 (a) The purpose of this part is to insure that public  
21 accommodations or facilities constructed in this state with  
22 private funds adhere to the provisions of Chapter 7  
23 (commencing with § 4450) of Division 5 of Title 1 of the  
24 Government Code. For the purposes of this part "public  
accommodation or facilities" means a building, structure,  
facility, complex, or improved area which is used by the  
general public and shall include auditoriums, hospitals,  
theaters, restaurants, hotels, motels, stadiums, and  
conventions centers.

26                   24. Health and Safety Code Section 19956, which  
27 appears in the same chapter as 19955, provides, in pertinent  
28 part: "[a]ll public accommodations constructed in this state

1 shall conform to the provisions of Chapter 7 (commencing with  
 2 § 4450) of Division 5 of Title 1 of the Government Code...."

3                   25. Section 19956 Health & Safety Code was operative  
 4 July 1, 1970, and is applicable to all public accommodations  
 5 constructed or altered after that date. On information and  
 6 belief, portions of the subject Carl's Jr. Restaurant were  
 7 constructed and/or altered after July 1, 1970, and portions of  
 8 the subject building were remodeled, altered and have undergone  
 9 structural repairs or additions after July 1, 1970. Such  
 10 construction required such building and its public accommodation  
 11 facilities to be subject to the requirements of Part 5.5,  
 12 Sections 19955, et seq., of the Health and Safety Code, which  
 13 requires provision of access upon "alterations, structural  
 14 repairs or additions" per Section 19959 Health & Safety Code, or  
 15 upon a change of occupancy (a form of "alteration").

16                   26. Pursuant to the authority delegated by Government  
 17 Code Section 4450, et seq., the State Architect promulgated  
 18 regulations for the enforcement of these provisions. Effective  
 19 January 1, 1982, Title 24 of the California Administrative Code  
 20 adopted the California State Architect's Regulations and these  
 21 regulations must be complied with as to any modifications of the  
 22 subject building occurring after that date. Any alterations of  
 23 the building after January 1, 1982 required compliance with the  
 24 Title 24 regulations then in effect, including that an  
 25 accessible path of travel leading to such facility from the  
 26 adjoining parking facilities and the boundary of the site.  
 27 Prior to 1982, similar requirements were incorporated into the  
 28 law from the American Standards Association. On information and

1 belief, one or more of the constructions of and alterations upon  
2 and modifications of the subject facilities occurred during the  
3 period of time that sections of the Health and Safety Code have  
4 provided that all buildings and facilities used by the public  
5 must conform to each of the standards and specifications  
6 described in the American Standards Association Specifications,  
7 and as to alterations occurring after January 1, 1982, to the  
8 standards of Title 24, the State Architect's Regulations.

9       27. Plaintiff Jean Riker is informed and believes and  
10 therefore alleges that defendants, and their predecessors in  
11 interest as owners, operators and/or lessors of the subject  
12 public accommodation (for which the defendants as current  
13 owners, operators and/or lessors of the building are  
14 responsible), and each of them caused the subject property to be  
15 constructed, altered and maintained in such a manner that  
16 physically disabled persons were denied full and equal access  
17 to, within and throughout said facilities, and full and equal  
18 use of said building. Further, on information and belief,  
19 defendants and each of them have continued to maintain and  
20 operate such building and its facilities in such condition up to  
21 the present time, despite actual and constructive notice to such  
22 defendants, and each of them, that the configuration of the  
23 building was in violation of the Civil Rights of disabled  
24 persons, such as plaintiff Jean Riker. Such construction,  
25 modification, ownership, operation, maintenance and practices of  
26 such a public facility is in violation of law as stated in Part  
27 5.5, Sections 19955ff Health and Safety Code, Sections 54 and  
28 54.1, et seq., Civil Code, and elsewhere in the laws of

1 California.

2           28. On information and belief, the subject building  
 3 and the defendants and each of them have denied full and equal  
 4 access to disabled persons in other respects due to non-  
 5 compliance with requirements of Title 24 of the California Code  
 6 of Regulations, and of other provisions of disabled access legal  
 7 requirements. Additionally, maintaining the barriers specified  
 8 in this complaint is independently a violation of both Title 24  
 9 of the California Building Code, and of Sections 54 and 54.1  
 10 Civil Code and their guarantee of "full and equal" access to all  
 11 public facilities (as pled in the second cause of action, and  
 12 also replied and incorporated herein by reference, as if fully  
 13 restated hereafter), in conjunction with Section 19955ff, per  
 14 James Donald v. Cafe Royalé (1990) 218 Cal.App.3d 168.

15           29. Injunctive Relief - The acts and omissions of  
 16 defendants as complained of continue on a day-to-day basis to  
 17 have the effect of allowing defendants to wrongfully exclude  
 18 plaintiff, and other similarly situated members of the public  
 19 who are physically disabled, from full and equal access to the  
 20 subject Carl's Jr. Restaurant. Such acts and omissions are the  
 21 continuing cause of humiliation and mental and emotional  
 22 suffering to plaintiff and other similarly situated persons in  
 23 that these actions treat them as inferior and second class  
 24 citizens and serve to discriminate against them, so long as  
 25 defendants do not provide a properly accessible, safe and equal  
 26 use of such facilities. Said acts have proximately caused and  
 27 will continue to cause irreparable injury to plaintiff and other  
 28 similarly situated persons if not enjoined by this court.

1                   30. Plaintiff seeks injunctive relief, pursuant to  
 2 Section 19953 Health and Safety Code and Section 55 Civil Code,  
 3 prohibiting those of the defendants that currently own, operate,  
 4 and/or lease (from or to) the subject Carl's Jr. Restaurant,  
 5 from maintaining architectural barriers to the use by disabled  
 6 persons of public accommodations and facilities, in violation of  
 7 Part 5.5, Sections 19955ff Health and Safety Code. Plaintiff  
 8 seeks to require such defendants to create safe and properly  
 9 accessible facilities.

10                  31. Attorneys' Fees - As a result of defendants' acts  
 11 and omissions in this regard, plaintiff has been required to  
 12 incur legal expenses and hire attorneys in order to enforce  
 13 plaintiff's rights and that of other similarly situated persons,  
 14 and to enforce provisions of the law protecting access for the  
 15 disabled, and prohibiting discrimination against the disabled,  
 16 and to take such action both in her own interest and in order to  
 17 enforce an important right affecting the public interest.  
 18 Plaintiff therefore seeks recovery of all reasonable attorneys'  
 19 fees, litigation expenses and costs incurred, pursuant to the  
 20 provisions of Section 1021.5 of the Code of Civil Procedure.  
 21 Plaintiff additionally seeks attorneys' fees and costs pursuant  
 22 to Section 19953 Health and Safety Code.

23                  WHEREFORE, plaintiff prays for relief as hereinafter  
 24 stated.

25                  ////

26                  ////

27                  ////

28                  ////

SECOND CAUSE OF ACTION:  
VIOLATION OF DISABLED RIGHTS ACT,  
CIVIL CODE §§ 54, 54.1, 54.3 ET SEQ.  
DENIAL OF FULL AND EQUAL ACCESS TO A PHYSICALLY DISABLED PERSON

32. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 31, above.

7                   33. At all times relevant to this action, California  
8 Civil Code Sections 54 and 54.1 have provided that physically  
9 disabled persons are not to be discriminated against because of  
10 physical handicap or disability. Section 54 Civil Code  
11 provides:

Individuals with disabilities shall have the same right as the general public to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, including hospitals, clinics, and physicians' offices, public facilities, and other public places.

16 Section 54.1 Civil Code provides that:

(a) (1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities... and privileges of all common carriers, airplanes, motor vehicles... or any other public conveyances or modes of transportation... hotels, lodging places, places of public accommodation and amusement or resort, and other places to which the general public is invited, subject only to the conditions or limitations established by law, or state or federal regulations, and applicable alike to all other persons.

34. California Civil Code Section 54.3 provides that  
any person or corporation who denies or interferes with  
admittance to or enjoyment of the public facilities as specified  
in Section 54 and 54.1 Civil Code is liable for EACH such  
offense for the actual damages and any amount up to a maximum of  
three times the amount of actual damages but in no case less

1 than \$1,000 and such attorneys' fees that may be determined by  
2 the Court in addition thereto, suffered by any person denied any  
3 of the rights provided in Sections 54 and 54.1, for services  
4 necessary to enforce those rights.

5           35. As a result of the refusal by defendants and each  
6 of them to comply with statutory requirements or otherwise  
7 provide reasonable access for disabled persons to the subject  
8 public facilities, plaintiff Jean Riker, and other similarly  
9 situated persons, were denied and continue to be denied their  
10 rights to full and equal access to, and use of, public  
11 facilities, and were and continue to be discriminated against on  
12 the sole basis that they are physically disabled and unable to  
13 make full and equal use of the facilities. Defendants' acts  
14 have caused plaintiff physical and psychological injury and  
15 pain, including fatigue, stress and strain in attempts to  
16 negotiate barriers, and emotional distress and general damages.

17           36. Plaintiff is a person within the meaning of Civil  
18 Code Sections 54 and 54.1 whose rights have been infringed upon  
19 and violated by the defendants. Plaintiff has been denied full  
20 and equal access on a day-to-day basis since her initial visit  
21 of on or about April 24, 2004, on each day in which full and  
22 equal access to such facility was denied and continuously  
23 deterred. On information and belief, defendants have failed to  
24 act to provide full and equal public access to their subject  
25 Carl's Jr. Restaurant, and continue to operate in violation of  
26 the law and continue to discriminate against physically disabled  
27 persons by failing to allow access to their building, and make  
28 reasonable modifications in policy respecting servicing the

1       disabled who cannot enter or use facilities on a full and equal  
 2       basis.

3               37. At all times since plaintiff's initial visit to  
 4       the subject Carl's Jr. Restaurant of on or about April 24, 2004,  
 5       and on information and belief for periods prior to this date,  
 6       defendants were on notice of the requirements of the law  
 7       relating to provision for full and equal disabled access.  
 8       Especially as defendants were on full notice, each day that  
 9       defendants have continued to deny access to disabled persons  
 10      constitutes a new and distinct violation of plaintiff's right to  
 11     full and equal access to this public facility, in violation of  
 12     Sections 54 and 54.1, et seq. Civil Code. In the event of a  
 13     default judgment against any particular defendant, plaintiff  
 14     will seek an injunction requiring provision of accessible  
 15     parking facilities, accessible paths of travel, accessible  
 16     public telephone facilities, accessible entrance facilities,  
 17     accessible service counter facilities, accessible dining  
 18     facilities, accessible circulation throughout the restaurant,  
 19     and accessible restroom facilities (all as identified in  
 20     paragraphs 13 through 14), plus daily damages of \$1,000 per day  
 21     from the date of plaintiff's visit to the subject Carl's Jr.  
 22     Restaurant on or about April 24, 2004, plus reasonable  
 23     attorneys' fees, litigation expenses and costs as set by the  
 24     court, until it is brought into full compliance with state and  
 25     federal access laws protecting the rights of the disabled.

26               38. Further, any violation of the Americans With  
 27     Disabilities Act of 1990 (as pled in the Third Cause of Action  
 28     hereinbelow, the contents of which are replied and incorporated

1 herein, word for word, as if separately replied), also  
2 constitutes a violation of Section 54(c) and Section 54.1(d)  
3 California Civil Code, thus independently justifying an award of  
4 damages and injunctive relief pursuant to California law on this  
5 basis, including but not limited to Civil Code Sections 54.3 and  
6 55.

7           39. **Punitive Damages, § 3294 Civil Code** - The actions  
8 of defendants, and each of them, over the period of time prior  
9 to and since the dates of plaintiff's visit of April 24, 2004,  
10 have been despicable and willful, and done in conscious  
11 disregard and complete indifference of the rights of disabled  
12 persons and of the public, and have been oppressive, and have  
13 evidenced actual or implied malicious intent toward those  
14 members of the public such as plaintiff, who, without  
15 justification, and in violation of the law, have been denied  
16 full and equal access to this public facility. Plaintiff prays  
17 for an award of punitive damages against said defendants and  
18 each of them pursuant to Section 3294 Civil Code in an amount  
19 sufficient to make a profound example of defendants and  
20 discourage others from discrimination and/or the conscious  
21 disregard for the rights and safety of disabled persons.  
22 Plaintiff does not know the financial worth of such defendants  
23 or the amount of punitive damages sufficient to accomplish the  
24 public purposes of Section 3294 Civil Code and seeks appropriate  
25 damages according to proof.

26           40. As a further basis for punitive damages,  
27 plaintiff alleges that defendants either ignored, or failed to  
28 act upon, specific complaints made to defendants, and plaintiff

1 is further informed and believes that prior to her visit pled  
 2 above, and after such visit, defendants, and each of them, had  
 3 been notified that disabled persons had complained of and/or  
 4 previously suffered similar denials of full and equal access,  
 5 similar to that complained of herein. Despite being informed of  
 6 such effect on disabled persons and the manner in which their  
 7 practices and lack of accessible facilities would continue to  
 8 discriminate against disabled persons on a day-by-day basis,  
 9 said defendants knowingly and willfully failed to provide  
 10 disabled accessible facilities and services, and have refused to  
 11 act to rectify this situation and provide full and equal access  
 12 for disabled persons up to the date of the filing of this  
 13 Complaint. Said conduct with knowledge of the effect it was  
 14 having on physically disabled persons constituted and continues  
 15 to constitute intentional and/or despicable conduct in willful  
 16 and conscious disregard of the rights of plaintiff and of other  
 17 similarly situated disabled persons, justifying the imposition  
 18 of punitive and exemplary damages per Section 3294 Civil Code.

19                   41. Plaintiff has been damaged by defendants'  
 20 wrongful conduct and seeks the relief that is afforded by  
 21 Sections 54.1, 54.3 and 55 of the Civil Code. Plaintiff seeks  
 22 actual damages, and statutory and treble damages against  
 23 defendants for all periods of time mentioned herein, as well as,  
 24 punitive damages. As to those of the defendants that currently  
 25 own, operate, and/or lease (from or to) the subject Carl's Jr.  
 26 Restaurant, plaintiff seeks preliminary and permanent injunctive  
 27 relief to enjoin and eliminate the discriminatory practices and  
 28 barriers that deny equal access for disabled persons, and for

1 reasonable attorneys' fees.

2                   42. WHEREFORE, plaintiff asks this Court to enjoin  
3 any continuing refusal by the defendants that currently own,  
4 operate, and or lease (from or to) the subject Carl's Jr.  
5 Restaurant, to grant such access to plaintiff and other  
6 similarly situated disabled persons, or alternatively to enjoin  
7 operation of the subject Carl's Jr. Restaurant as a public  
8 accommodation until such defendants comply with all applicable  
9 statutory requirements relating to access to physically disabled  
10 persons, and that the Court award statutory attorneys' fees,  
11 litigation expenses and costs pursuant to Civil Code Section 55,  
12 Code of Civil Procedure Section 1021.5, and Health & Safety Code  
13 Section 19953, and as further prayed for herein.

14 WHEREFORE, plaintiff prays for damages and injunctive  
15 relief as hereinafter stated.

THIRD CAUSE OF ACTION:  
VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990  
42 USC §§ 12101ff

19                   43. Plaintiff repleads and incorporates by reference,  
20 as if fully set forth again herein, the factual allegations  
21 contained in Paragraphs 1 through 42, above.

22                   44. Pursuant to law, in 1990 the United States  
23 Congress made findings per 42 U.S.C. Section 12101 regarding  
24 physically disabled persons, finding that laws were needed to  
25 more fully protect "some 43 million Americans with one or more  
26 physical or mental disabilities;" that "historically society has  
27 tended to isolate and segregate individuals with disabilities;"  
28 that "such forms of discrimination against individuals with

1       disabilities continue to be a serious and pervasive social  
 2       problem;" that "the Nation's proper goals regarding individuals  
 3       with disabilities are to assure equality of opportunity, full  
 4       participation, independent living and economic self sufficiency  
 5       for such individuals;" and that "the continuing existence of  
 6       unfair and unnecessary discrimination and prejudice denies  
 7       people with disabilities the opportunity to compete on an equal  
 8       basis and to pursue those opportunities for which our free  
 9       society is justifiably famous..."

10           45. Congress stated as its purpose in passing the  
 11       Americans with Disabilities Act (42 USC § 12101(b)):

12           It is the purpose of this act –

13           (1) to provide a clear and comprehensive national  
 14       mandate for the elimination of discrimination against  
 15       individuals with disabilities;

16           (2) to provide clear, strong, consistent, enforceable  
 17       standards addressing discrimination against individuals  
 18       with disabilities;

19           (3) to ensure that the Federal government plays a  
 20       central role in enforcing the standards established in this  
 21       act on behalf of individuals with disabilities; and

22           (4) to invoke the sweep of Congressional authority,  
 23       including the power to enforce the 14th Amendment and to  
 24       regulate commerce, in order to address the major areas of  
 25       discrimination faced day to day by people with  
 26       disabilities. (Emphasis added)

27           46. As part of the Americans with Disabilities Act,  
 28       Public Law 101-336, (hereinafter the "ADA"), Congress passed  
 "Title III - Public Accommodations and Services Operated by  
 Private Entities" (42 U.S.C 12181ff). Among "private entities"  
 which are considered "public accommodations" for purposes of  
 this title are a for purposes of this title are Among the public  
 accommodations identified for purposes of this title were "a

1 restaurant, bar, or other establishment serving food or drink"  
 2 (§§ 301(7)(B) [42 U.S.C. 12181].)

3                   47. Pursuant to Section 302 [42 U.S.C 12182], "[n]o  
 4 individual shall be discriminated against on the basis of  
 5 disability in the full and equal enjoyment of the goods,  
 6 services, facilities, privileges, advantages, or accommodations  
 7 of any place of public accommodation by any person who owns,  
 8 leases, or leases to, or operates a place of public  
 9 accommodation."

10                  48. Among the general prohibitions of discrimination  
 11 included in Section 302(b)(1)(A) are the following:

12                  § 302(b)(1)(A)(i): "DENIAL OF PARTICIPATION. – It  
 13 shall be discriminatory to subject an individual or class  
 14 of individuals on the basis of a disability or disabilities  
 15 of such individual or class, directly, or through  
 16 contractual, licensing, or other arrangements, to a denial  
 17 of the opportunity of the individual or class to  
 18 participate in or benefit from the goods, services,  
 19 facilities, privileges, advantages, or accommodations of an  
 20 entity."

21                  § 302(b)(1)(A)(ii): "PARTICIPATION IN UNEQUAL BENEFIT –  
 22 It shall be discriminatory to afford an individual or class  
 23 of individuals, on the basis of a disability or disabilities  
 24 of such individual or class, directly, or through  
 25 contractual, licensing, or other arrangements with the  
 26 opportunity to participate in or benefit from a good,  
 27 service, facility, privilege, advantage, or accommodation  
 28 that is not equal to that afforded to other individuals."

29                  § 302(b)(1)(A)(iii): "SEPARATE BENEFIT. – It shall be  
 30 discriminatory to provide an individual or class of  
 31 individuals, on the basis of a disability or disabilities  
 32 of such individual or class, directly, or through  
 33 contractual, licensing, or other arrangements with a good,  
 34 service, facility, privilege, advantage, or accommodation  
 35 that is different or separate from that provided to other  
 36 individuals, unless such action is necessary to provide the  
 37 individual or class of individuals with a good, service,  
 38 facility, privilege, advantage, or accommodation, or other  
 39 opportunity that is as effective as that provided to  
 40 others."

1                   49. Among the specific prohibitions against  
 2 discrimination in the ADA include the following:

3                   § 302(b) (2) (A) (ii): "A failure to make reasonable  
 4 modifications in policies, practices or procedures when  
 5 such modifications are necessary to afford such goods,  
 6 services, facilities, privileges, advantages or  
 7 accommodations to individuals with disabilities..."

8                   § 302(b) (2) (A) (iii): "A failure to take such steps as  
 9 may be necessary to ensure that no individual with a  
 10 disability is excluded, denied services, segregated or  
 11 otherwise treated differently than other individuals  
 12 because of the absence of auxiliary aids and services,  
 13 unless the entity can demonstrate that taking such steps  
 14 would fundamentally alter the nature of the good, service,  
 15 facility, privilege, advantage, or accommodation being  
 16 offered or would result in an undue burden;"

17                   § 302(b) (2) (A) (iv): "A failure to remove architectural  
 18 barriers, and communication barriers that are structural in  
 19 nature, in existing facilities... where such removal is  
 20 readily achievable;"

21                   § 302(b) (2) (A) (v): "Where an entity can demonstrate  
 22 that the removal of a barrier under clause (iv) is not  
 23 readily achievable, a failure to make such goods, services,  
 24 facilities, privileges, advantages, or accommodations  
 25 available through alternative methods if such methods are  
 26 readily achievable." The acts and omissions of defendants  
 27 set forth herein were in violation of plaintiff's rights  
 28 under the ADA, Public Law 101-336, and the regulations  
 promulgated thereunder, 28 CFR Part 36ff.

19                   50. The removal of each of the barriers complained of  
 20 by plaintiff Jean Riker as hereinabove alleged (i.e., in  
 21 paragraphs 13 through 14, above) were – at all times on or after  
 22 January 26, 1992 – "readily achievable."

23                   51. Further, at all times herein mentioned,  
 24 modification of or removal of these barriers was "readily  
 25 achievable" under the factors specified in the Americans with  
 26 Disabilities Act of 1990, including but not limited to  
 27 section 301(9) [42 U.S.C. 12181], and the Regulations adopted  
 28 thereto.

1           52. Further, if defendants are collectively able to  
2 "demonstrate" that it was not "readily achievable" for  
3 defendants to remove each of such barriers, defendants have  
4 failed to make the required services available through  
5 alternative methods which were readily achievable, as required  
6 by Section 302 of the ADA [42 U.S.C. 12182].

7           53. "Discrimination" is further defined under  
8 Section 303(a)(2) of the ADA, for a facility or part thereof  
9 that was altered after the effective date of Section 303 of the  
10 ADA in such a manner as to affect or that could affect the  
11 usability of the facility or part thereof by persons with  
12 disabilities, to include per Section 303(a)(2) [42 U.S.C.  
13 12183], "a failure to make alterations in such a manner that, to  
14 the maximum extent feasible, the altered portions of the  
15 facility are readily accessible to and usable by individuals  
16 with disabilities, including individuals who use wheelchairs."  
17 Additionally, for alterations to areas of a facility involving a  
18 "primary function," discrimination under the ADA, per Section  
19 303(a)(2) (42 U.S.C. 12183), also includes the failure of an  
20 entity "to make the alterations in such a manner that, to the  
21 maximum extent feasible, the path of travel to the altered area  
22 and the bathrooms, telephones, and drinking fountains serving  
23 the altered area, are readily accessible to and usable by  
24 individuals with disabilities." On information and belief, the  
25 subject building constitutes a "commercial facility," and  
26 defendants have, since the date of enactment of the ADA,  
27 performed alterations (including alterations to areas of primary  
28 function) to the subject building, and its facilities, public

1 accommodations, and commercial facilities, which fail to provide  
 2 facilities and paths of travel to such areas that are readily  
 3 accessible to and usable by individuals with disabilities, in  
 4 violation of Section 303(a)(2), and the regulations promulgated  
 5 thereunder, 28 CFR Part 36ff.

6               54. Pursuant to the Americans with Disabilities Act,  
 7 42 USC 12188ff, Section 308, plaintiff is entitled to the  
 8 remedies and procedures set forth in Section 204, subsection  
 9 (a), of the Civil Rights Act of 1964 (42 USC 2000a-3, at  
 10 subsection (a)), as plaintiff is being subjected to  
 11 discrimination on the basis of disability in violation of this  
 12 title or has reasonable grounds for believing that she is about  
 13 to be subjected to discrimination in violation of Sections 302  
 14 and 303. On information and belief, defendants have continued  
 15 to violate the law and deny the rights of plaintiff and of other  
 16 disabled persons to access this public accommodation since  
 17 plaintiff Jean Riker's visit of on or about April 24, 2004.  
 18 Pursuant to Section 308(a)(2), "[i]n cases of violations of  
 19 Section 302(b)(2)(A)(iv)... injunctive relief shall include an  
 20 order to alter facilities to make such facilities readily  
 21 accessible to and usable by individuals with disabilities to the  
 22 extent required by this title."

23               55. As a result of defendants' acts and omissions in  
 24 this regard, plaintiff has been required to incur legal expenses  
 25 and attorney fees, as provided by statute, in order to enforce  
 26 plaintiff's rights and to enforce provisions of the law  
 27 protecting access for disabled persons and prohibiting  
 28 discrimination against disabled persons. Plaintiff therefore

1 seeks recovery of all reasonable attorneys' fees, litigation  
 2 expenses (including expert fees) and costs, pursuant to the  
 3 provisions of Section 505 of the ADA (42 U.S.C. 12205) and the  
 4 Department of Justice's regulations for enforcement of Title III  
 5 of the ADA (28 CFR 36.505). Additionally, plaintiff's lawsuit  
 6 is intended not only to obtain compensation for damages to  
 7 plaintiff, but also to require the defendants to make their  
 8 facilities accessible to all disabled members of the public,  
 9 justifying "public interest" attorneys' fees pursuant to the  
 10 provisions of California Code of Civil Procedure Section 1021.5.

11 WHEREFORE, plaintiff prays that this Court grant  
 12 relief as hereinafter stated:

13

14 **FOURTH CAUSE OF ACTION:**

15 **DAMAGES AND INJUNCTIVE RELIEF UNDER THE DISABLED RIGHTS ACT  
 FOR VIOLATION OF TITLE III OF THE AMERICANS WITH DISABILITIES ACT**

16 56. Plaintiff repleads and incorporates by reference,  
 17 as if fully set forth again herein, the allegations contained in  
 18 Paragraphs 1 through 55 of this complaint and incorporates them  
 19 herein as if separately replied.

20 57. Each violation of the Americans With Disabilities  
 21 Act of 1990, as complained of in the Third Causes of Action  
 22 hereinabove (the contents of which causes of action have been  
 23 incorporated herein as if separately replied), is also a  
 24 violation of section 54(c) and section 54.1(d) California Civil  
 25 Code, further and independently justifying damages, injunctive  
 26 relief, and other statutory relief per sections 54.3 and 55  
 27 California Civil Code, all as previously pled.

28 58. Defendants' conduct was despicable and in

1 "conscious disregard" for the rights and safety of plaintiff and  
2 other disabled persons. Plaintiff hereby incorporates by  
3 reference, as if fully replied hereafter, the punitive damage  
4 allegations of paragraphs 39 and 40.

5           59. As a result of defendants' acts and omissions in  
6 this regard, plaintiff has been required to incur legal expenses  
7 and attorney fees, as provided by statute, in order to enforce  
8 plaintiff's rights and to enforce provisions of the law  
9 protecting access for disabled persons and prohibiting  
10 discrimination against disabled persons. Plaintiff therefore  
11 seeks recovery of all reasonable attorneys' fees, litigation  
12 expenses (including expert fees) and costs, pursuant to the  
13 provisions of Section 55 of the Civil Code. Additionally,  
14 plaintiff's lawsuit is intended not only to obtain compensation  
15 for damages to plaintiff, but also to require the defendants to  
16 make their facilities accessible to all disabled members of the  
17 public, justifying "public interest" attorneys' fees pursuant to  
18 the provisions of California Code of Civil Procedure Section  
19 1021.5.

20 WHEREFORE, plaintiff prays for damages and injunctive  
21 relief as hereinafter stated.

## **FIFTH CAUSE OF ACTION:**

DAMAGES AND INJUNCTIVE RELIEF UNDER THE UNRUH CIVIL RIGHTS ACT  
FOR VIOLATION OF TITLE III OF THE AMERICANS WITH DISABILITIES ACT

25                   60. Plaintiff repleads and incorporates by reference,  
26 as if fully set forth again herein, the allegations contained in  
27 Paragraphs 1 through 59 of this complaint and incorporates them  
28 herein as if separately replied.

1           61. Each violation of the Americans With Disabilities  
2 Act of 1990, as complained of in the Third Causes of Action  
3 hereinabove (the contents of which causes of action have been  
4 incorporated herein as if separately replied), is also a  
5 violation of section 51(f) of the Unruh Civil Rights Act,  
6 further and independently justifying damages of \$4,000 per  
7 offense, injunctive relief, and other statutory relief per  
8 sections 52 and common law decision.

9           62. At all times since plaintiff's initial visit to  
10 the subject Carl's Jr. Restaurant of on or about April 24, 2004,  
11 and on information and belief for periods prior to this date,  
12 defendants were on notice of the requirements of the law  
13 relating to provision for full and equal disabled access.  
14 Especially as defendants were on full notice, each day that  
15 defendants have continued to deny access to disabled persons  
16 constitutes a new and distinct violation of plaintiff's right to  
17 full and equal access to this public facility, in violation of  
18 Sections 54 and 54.1, et seq. Civil Code. In the event of a  
19 default judgment against any particular defendant, plaintiff  
20 will seek an injunction requiring provision of accessible  
21 parking facilities, accessible paths of travel, accessible  
22 public telephone facilities, accessible entrance facilities,  
23 accessible service counter facilities, accessible dining  
24 facilities, accessible circulation throughout the restaurant,  
25 and accessible restroom facilities (all as identified in  
26 paragraphs 13 through 14), plus daily damages of \$4,000 per day  
27 from the date of plaintiff's visit to the subject Carl's Jr.  
28 Restaurant on or about April 24, 2004, plus reasonable

1 attorneys' fees, litigation expenses and costs as set by the  
2 court, until it is brought into full compliance with state and  
3 federal access laws protecting the rights of the disabled.

4                   63. Defendants' conduct was despicable and in  
5 "conscious disregard" for the rights and safety of plaintiff and  
6 other disabled persons. Plaintiff hereby incorporates by  
7 reference, as if fully replied hereafter, the punitive damage  
8 allegations of paragraphs 39 and 40.

9                   64. As a result of defendants' acts and omissions in  
10                   this regard, plaintiff has been required to incur legal expenses  
11                   and attorney fees, as provided by statute, in order to enforce  
12                   plaintiff's rights and to enforce provisions of the law  
13                   protecting access for disabled persons and prohibiting  
14                   discrimination against disabled persons. Plaintiff therefore  
15                   seeks recovery of all reasonable attorneys' fees, litigation  
16                   expenses (including expert fees) and costs, pursuant to the  
17                   provisions of Section 52 of the Civil Code. Additionally,  
18                   plaintiff's lawsuit is intended not only to obtain compensation  
19                   for damages to plaintiff, but also to require the defendants to  
20                   make their facilities accessible to all disabled members of the  
21                   public, justifying "public interest" attorneys' fees pursuant to  
22                   the provisions of California Code of Civil Procedure Section  
23                   1021.5.

**SIXTH CAUSE OF ACTION:**  
**VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**  
**UNFAIR COMPETITION THROUGH VIOLATION OF CALIFORNIA AND STATE LAW**  
**PROTECTING THE RIGHTS OF DISABLED PERSONS**

65. Plaintiff repleads and incorporates by reference.

1 as if fully set forth again herein, the factual allegations  
2 contained in paragraphs 1 through 64 of this complaint and  
3 incorporate them herein as if separately replied.

4 66. On a yearly basis, the defendants are engaged in  
5 the business of providing fast food restaurant services and  
6 facilities at the Carl's Jr. Restaurant throughout the year.

7 67. Commencing within three years of the date of the  
8 original complaint filed in this action, the defendants have  
9 committed acts of unfair competition, as defined by Business and  
10 Professions Code section 17200, by providing facilities that are  
11 inaccessible to the disabled members of the general public,  
12 including, but not limited to the acts facilities listed in  
13 paragraphs 13 through 14, above, all in violation of standards  
14 of sections 54 and 54.1 et seq. Civil Code; Title 24 of the  
15 California Administrative Code; sections 4450-4456 Government  
16 Code; sections 19952, 19953 and 19955-19959 Health & Safety  
17 Code; Title III of the Americans With Disabilities Act of 1990;  
18 and the Americans With Disabilities Act Access Guidelines.

19 68. The acts and practices of the defendants are  
20 likely to continue and therefore will continue to mislead to  
21 mislead the general public as to the true cost of providing the  
22 specified goods and services and their expected availability to  
23 members of the public with physical disabilities pursuant to  
24 law.

25 69. As a direct and proximate result of the  
26 defendants' conduct, defendants have received and continue to  
27 receive unfair profits that rightfully belong to members of  
28 general public who have been adversely affected by defendants'

1 || conduct, such as plaintiff.

2                   70. Plaintiff has no adequate remedy at law, and  
3 unless the relief requested herein is granted, plaintiff will  
4 suffer irreparable harm in that she will continue to be  
5 discriminated against and denied access to the specified public  
6 facilities. Because plaintiff seeks improvement of access for  
7 persons with disabilities, which will benefit a significant  
8 portion of the public, plaintiff seeks attorneys' fees pursuant  
9 to sections 52, 54.3 and 55 Civil Code, section 1021.5 Code of  
10 Civil Procedure, section 19953 Health & Safety Code, and section  
11 505 of the Americans with Disabilities Act.

12                   71. Defendants' conduct was despicable and in  
13 "conscious disregard" for the rights and safety of plaintiff and  
14 other disabled persons. Plaintiff hereby incorporates by  
15 reference, as if fully replied hereafter, the punitive damage  
16 allegations of paragraphs 39 and 40.

SEVENTH CAUSE OF ACTION:  
VIOLATION OF GOVERNMENT CODE SECTION 12948

22                   72. Plaintiff repleads and incorporates by reference,  
23 as if fully set forth again herein, the factual allegations  
24 contained in paragraphs 1 through 71 of this complaint and  
25 incorporate them herein as if separately replied.

26                   73. Defendants' actions are in violation of  
27 Government Code Section 12948, and the corresponding Civil Code  
28 Sections 51, 54, and 54.1.

1           74. Plaintiff seeks injunctive relief, statutory and  
 2 compensatory damages, punitive damages, and attorneys fees under  
 3 the FEHA.

4           Wherefore, plaintiff prays that the court grant relief  
 5 as requested hereinbelow.

6  
 7           **EIGHTH CAUSE OF ACTION:**

8           **NEGLIGENCE PER SE IN INJURING PLAINTIFF DUE TO VIOLATIONS OF  
 STATE AND FEDERAL LAW PROTECTING THE DISABLED, AND COMPLETE  
 INDIFFERENCE TO THE CERTAIN RESULT**

9  
 10          75. Plaintiff repleads and incorporates by reference,  
 11 as if fully set forth again herein, the factual allegations  
 12 contained in paragraphs 1 through 74 of this complaint and  
 13 incorporate them herein as if separately replied.

14          76. Plaintiff incorporates by reference all prayers  
 15 for relief related to plaintiff's damages.

16          77. Defendants' actions, as previously pled,  
 17 constitute negligence per se, as they constitute violations of  
 18 state and federal laws protecting the rights and safety of  
 19 disabled persons such as plaintiff.

20          78. Defendants' conduct was despicable and done in  
 21 "conscious disregard" and with "complete indifference" for the  
 22 rights and safety of plaintiff and other disabled persons,  
 23 including plaintiff, and the certainty that their rights and  
 24 safety would be violated. Therefore, plaintiff hereby  
 25 incorporates by reference, as if fully replied hereafter, the  
 26 punitive damage allegations of paragraphs 39 and 40.

27          Wherefore, plaintiff prays that the court grant relief  
 28 as requested hereinbelow.

## PRAYER

WHEREFORE, plaintiff prays for an award and relief as follows:

1. That those of the defendants that currently own,  
operate, and or lease (from or to) the subject Carl's Jr.  
Restaurant and its facilities be preliminarily and permanently  
enjoined from operating and maintaining these public facilities  
as public accommodations and commercial facilities, so long as  
disabled persons are not provided full and equal access to the  
accommodations and facilities, in violation of provided by  
Sections 54, 54.1, and 55 et seq., of the Civil Code, Sections  
19955 et seq. Health & Safety Code, Sections 4450, et seq.  
Government Code, the American Standard Specifications (A117.1-  
1961), or such other standards, including those of the State  
Architect's Regulations for Handicapped Access, as found in  
Title 24 of the California Code of Regulations or other  
regulations as are currently required by law; and that  
defendants be ordered to come into compliance with the Americans  
with Disabilities Act of 1990, including an order that those of  
the defendants that currently own, operate, and/or lease (from  
or to) the subject Carl's Jr. Restaurant, inter alia, "alter the  
subject facilities to make such facilities readily accessible to  
and usable by individuals with disabilities," and institute  
reasonable modifications in policies and practices, per  
Section 308 of Public Law 101-336 (the ADA);

26                   2. General, compensatory, and statutory damages, and  
27 all damages as afforded by Civil Code Sections 54.3, including  
28 treble damages, for each violation and each day on which

1 defendants have denied to plaintiff equal access for the  
 2 disabled, commencing on the date plaintiff's initial visit of  
 3 April 24, 2004, according to proof.

4           3. General, compensatory, and statutory damages, and  
 5 all damages as afforded by Civil Code Sections 52, including  
 6 treble damages, for each violation and each day on which  
 7 defendants have denied to plaintiff equal access for the  
 8 disabled under Title III of the ADA, commencing on the date  
 9 plaintiff's initial visit of April 24, 2004, according to proof.

10           4. A permanent injunction pursuant to Business and  
 11 Professions Code section 17203 restraining and enjoining the  
 12 defendants from continuing the acts of unfair competition set  
 13 forth above;

14           5. During the pendency of this action, a preliminary  
 15 injunction issue pursuant to Business and Professions Code  
 16 section 17203 to enjoin and restrain defendants from the acts of  
 17 unfair competition set forth above;

18           6. Defendants be ordered to restore to the public  
 19 all funds acquired by the acts of unfair competition set forth  
 20 above pursuant to Business and Professions Code section 17203;

21           7. Attorney's fees, litigation expenses and costs  
 22 pursuant to Sections 54.3 and 55 of the Civil Code,  
 23 Section 19953 Health & Safety Code, Section 1021.5 Code of Civil  
 24 Procedure, and Section 505 of the ADA;

25           8. Punitive damages pursuant to Section 3294 Civil  
 26 Code;

27           9. For all costs of suit;

28           10. Prejudgment interest pursuant to Section 3291 of

1 the Civil Code;

2                   11. Such other and further relief as the Court deems  
3 just and proper.

4  
5 Dated: June 20, 2003

**Thimesch Law Offices**

TIMOTHY S. THIMESCH



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Attorneys for Plaintiff  
JEAN RIKER

**DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands a jury for all claims for  
13 which a jury is permitted.

14  
15  
16 Dated: June 20, 2003

  
By: TIMOTHY S. THIMESCH  
Attorneys for Plaintiff